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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,347	07/14/2003	John Devincenzo	250.21	6697

7590

06/30/2004

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EXAMINER

O CONNOR, CARY E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/618,347	Applicant(s) DEVINCENZO	
	Examiner Cary E. O'Connor	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9,11 and 12 is/are rejected.
- 7) ☒ Claim(s) 7 and 10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 9, 11 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Marotta et al (2003/0044746). Marotta shows an orthodontic implant comprising at least one member 10, anchoring means (implant disclosed in paragraph 0058, lines 3-4) disposed on the member and a wire 5 secured to the upper portion 11 of the member and extending therefrom. As to claim 9, the method of applying force to a tooth is inherently carried out in the use of the Marotta device. As to claims 11 and 12, element 11 can be considered a cap comprising an open end and having a quadrilateral-sided configuration. One of the sides is open at 14.

Claims 1-5 and 8 are rejected under 35 U.S.C. 102(a) as being anticipated by Payton (2002/0150856). Payton shows an orthodontic implant comprising at least one member 110, anchoring means 15 disposed on the member and a wire 42 secured to the upper portion 18 of the member and extending therefrom. As to claim 2, note the pair of vertical and horizontal cross members 16, 14 which intersect at an attachment

point (see Figure 1). As to claims 3 and 4, element 18 is considered to be a cap. As to claim 5, note that a plurality of circular anchoring means 15 are disposed on the horizontal cross member and extend vertically downwardly from the attachment point when the device is positioned as shown in Figure 12. As to claim 8, note that the wire 90 extends horizontally from the upper portion and is attached to an archwire (see Figure 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peyton (2002/0150856). Peyton discloses that the cap 18 may be affixed to the upper portion (paragraph 0033, last three lines) but does not disclose how this is done. It is well known to affix an orthodontic bracket to a base with the use of cement. It would have been obvious to one of ordinary skill in the art at the time the invention was made to cement the cap of Peyton to the base 16 because this is a well known method of securing a bracket to a base.

Allowable Subject Matter

Claims 7 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "means" is used in lines 2-4. Correction is required. See MPEP § 608.01(b).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 703-308-2701. The examiner can normally be reached on M-F 7:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Cary E. O'Connor
Primary Examiner
Art Unit 3732

ceo
June 23, 2004